

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UBERVITA, LLC,)	No.
)	
Plaintiff,)	COMPLAINT
)	
vs.)	JURY DEMAND
)	
JOHN DOES 1-10,)	
)	
Defendants.)	

Ubervita, LLC ("Ubervita"), alleges for its Complaint against John Does 1-10 (collectively, "Defendants") as follows:

SUMMARY OF ALLEGATIONS

1. Ubervita is one of the top sellers of nutritional supplements on Amazon.com. The unknown defendants are believed to be associated with an Ubervita competitor. Rather than fairly compete with Ubervita in the marketplace, the unknown defendants have conspired to disrupt Ubervita's business through a campaign of dirty tricks, including by posing as Ubervita in making false statements to Amazon.com and the consuming public, by placing fraudulent bulk orders of Ubervita products, and by posting false reviews of Ubervita products. These intentionally tortious acts have harmed Ubervita and will continue to do so until Ubervita can learn the defendants' identities and obtain judicial relief against them.

PARTIES

2. Plaintiff Ubervita is a Washington limited liability company. It is in the business of selling nutritional supplements.

3. Defendants are unknown person(s), or are agent(s) of juristic person(s), who have engaged in the acts and omissions described herein. Ubervita is unaware of the true names and capacities of the Defendants and, therefore, sues those persons by such fictitious names. Ubervita will amend this Complaint to allege their true names and capacities when ascertained. The acts alleged herein were undertaken by each defendant individually, were actions that each defendant caused to occur, were actions that each defendant authorized, controlled, directed, or had the ability to authorize, control, or direct, and/or were actions each defendant assisted, participated in, or otherwise encouraged, and are actions for which each defendant is liable. Each of the Defendants was the agent of each of the remaining Defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of the other Defendants.

JURISDICTION, AND VENUE

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, 28 U.S.C. § 1338, 15 U.S.C. § 1121, and supplemental jurisdiction over the state law claims asserted herein under 28 U.S.C. § 1367(a). The Court has personal jurisdiction over Defendants because they committed torts within the State of Washington and this District. On information and belief, by using Amazon's website, they also agreed to Amazon's "Terms of Use," which require users to agree to resolve disputes in the State of Washington, and that Washington law would govern any such action. For these reasons, Defendants have purposefully availed themselves to this forum.

5. Venue is proper under 28 U.S.C. 1391(b)(2) because a substantial part of the events giving rise to Ubervita's claims occurred in this District.

FACTUAL ALLEGATIONS

6. Ubervita sells its nutritional supplements through the Amazon marketplace accessible at *www.Amazon.com*. Ubervita's products are among the best-selling and most favorably-reviewed nutritional supplements available.

7. Beginning in early 2014, Defendants began a campaign of dirty tricks against Ubervita in a wrongful effort to put Ubervita at a competitive disadvantage in the marketplace. As discussed below, Defendants' illegal acts include placing fraudulent bulk orders of Ubervita products in an effort to disrupt Ubervita's inventory; posing as Ubervita in making false counterfeiting complaints to Amazon in an effort to disrupt the sale of Ubervita products; posing as Ubervita in posting a Craig's List ad that purports to offer cash for favorable reviews of Ubervita products; and posing as dissatisfied Ubervita customers in posting phony negative reviews of Ubervita products, in part based on the false claim that Ubervita pays for positive reviews.

Defendants' Fake Bulk Orders

8. Defendants have placed dozens of phony bulk orders for Ubervita products in an effort to manipulate Amazon's ordering system into showing that such products were "sold out" and not available for actual consumers to purchase. Several times, Defendants attempted to purchase 999 units of Ubervita product (costing almost \$30,000), the maximum amount that Amazon's system allows. When Amazon lowered the maximum number of units available in a single transaction in response to Defendants' fraud, Defendants learned that amount through trial and error, and began placing fraudulent orders in that amount.

Defendants' Fake Counterfeiting Complaints to Amazon

9. On at least four occasions, Defendants have impersonated Ubervita in communications to Amazon, using fake email addresses that appeared to come from Ubervita, and alleging that Ubervita was selling counterfeit product. Each time, Amazon responded to the false complaints by suspending the sale of genuine Ubervita products – rendering them

1 unavailable for purchase. Ubervita's products remained unavailable until Ubervita discovered
2 the fraud and brought it to Amazon's attention.

3 Defendants' Fake Offer to Pay for Favorable Reviews

4 10. In June 2014, Defendants similarly impersonated Ubervita by taking out an ad
5 on Craig's List in Ubervita's name that offered to pay for positive reviews on Amazon.com. The
6 ad states:

7 **Paying \$10 for amazon reviews**

8 We are looking for people to leave reviews for our top selling product on
9 Amazon. The product is a well known fat burner called W700.

10 Please go to this link, and leave ONLY a 5 star review. Once you are done,
11 please email us through Craigslist with your paypa[l] email address. We will then
pay you immediately.

12 As discussed below, Defendants fraudulently placed this ad in Ubervita's name to support their
13 false claims that Ubervita pays for favorable reviews.

14 Defendants' Fake Reviews on Amazon.com

15 11. For months, Defendants have tarnished Ubervita's reputation by posing as
16 legitimate consumers of Ubervita's products and leaving phony negative reviews of such
17 products on Amazon.com. In ostensible support for such reviews, Defendants make frequent
18 untrue statements of fact about Ubervita and its products, including by falsely accusing Ubervita
19 of publishing fraudulent positive reviews of its products and/or of selling "fake" products. For
20 example, some of Defendants' reviews refer to Ubervita as a being a "scam," state that
21 Ubervita's products are "placebos," and claim that Ubervita pays for five-star (the best possible)
22 product reviews. None of those statements of fact is true. Because Defendants repeat their false
23 statements many times, and quote false statements made by other Defendants, they make it
24 appear as though their false reviews reflect a growing body of unsatisfied customers. In
25 actuality, however, Ubervita's products are some of the best-selling and most positively-
26 reviewed nutritional supplements available on Amazon.com. The Defendants' negative reviews
are a construction of their own making.

12. Indeed, Defendants cited the Craig's List ad they published in Ubervita's name in manufactured support for their claim that Ubervita pays for its many positive reviews. Using the fictitious screen name "S. Uy," one of the Defendants posted the following one-star review (the worst possible) on Amazon.com:

Paid reviews!

... I saw this today:

[...]

In case it is removed later on, this is an ad in craigslist offering \$10 in exchange for a 5 star review of this product! I have no idea how long this has been going on for, but like many people, I was swayed by all the positive reviews, and now I have no idea if what I paid for actually works or not!

EDIT: It looks like amazon won't allow external links, so I will just take a screenshot of the craigslist ad and post it up in the user pics section.

13. When the authenticity of the review was questioned in a follow-up "comment," the anonymous defendant tellingly responded: "Is it possible for another company to have made the Craigslist ad to frame Ubervita? Absolutely. But that's up to Amazon to investigate, and the people to decide. I do believe there are enough facts for one to make an educated decision though."

CAUSES OF ACTION

Claim One: Unfair Competition
(15 U.S.C. § 1125(a))

14. Ubervita re-alleges the allegations set forth above.

15. Defendants' dirty tricks campaign against Ubervita as their competitor constitutes unfair competition. Their wrongful acts include impersonating Ubervita in making false statements to Amazon and the public; falsely claiming that Ubervita is selling counterfeit goods; and making fraudulent bulk orders of Ubervita products in an effort to disrupt Ubervita's inventory. These acts violate Section 43(a) of the Lanham Act.

16. Ubervita is entitled to an injunction stopping the Defendants from continuing to engage in their dirty tricks.

17. Defendants' acts have damaged Ubervita in an amount to be proven at trial.

Claim Two: Product Disparagement
(15 U.S.C. § 1125(a))

18. Ubervita re-alleges the allegations set forth above.

19. Defendants have made false or misleading statements of fact in commercial advertising or promotion about Ubervita's goods; their statements actually deceive or are likely to deceive a substantial segment of the intended audience; Defendants' deception is material in that it is likely to influence purchasing decisions; Defendants caused the statements; and Defendants' statements have resulted in actual or probable injury to Ubervita. As such, they violate Section 43(a) of the Lanham Act.

20. Ubervita is entitled to an injunction stopping the Defendants from continuing to publish their false statements.

21. Defendants' acts have damaged Ubervita in an amount to be proven at trial.

Claim Three: Product Disparagement/Trade Libel
(Washington Common Law)

22. Ubervita re-alleges the allegations set forth above.

23. By making the statements described above, Defendants intentionally and maliciously published to others in writing false and disparaging allegations that impugned the quality or integrity of Ubervita's products, which caused others not to deal with Ubervita. Therefore, they are liable to Ubervita for product disparagement/trade libel.

24. Defendants' acts have damaged Ubervita in an amount to be proven at trial.

Claim Four: Tortious Interference
(Washington Common Law)

25. Ubervita re-alleges the allegations set forth above.

26. Ubervita has valid contractual relationships and business expectancies with Amazon and consumers who purchase nutritional supplements through Amazon.

27. Defendants are aware of those contractual relationships and business expectancies.

28. By engaging in the dirty tricks campaign described above, Defendants intentionally interfered with Ubervita's contractual relationships and business expectancies, causing a breach or termination of those contractual relationships and business expectancies.

29. Defendants' interference is for an improper purpose and used improper means.

30. Defendants' interference damaged Ubervita as a result in an amount to be proven at trial.

Claim Five: Unfair Competition Under Washington Law
(RCW 19.86)

31. Ubervita re-alleges the allegations set forth above.

32. Defendants intended for the acts described above to harm Ubervita in its business within the State of Washington. Such acts constitute unfair methods of competition and unfair trade practices, which are damaging to the public interest in violation of the Washington Consumer Protection/Unfair Business Practices Act, RCW 19.86.

33. Defendants' unfair methods of competition occur in trade or commerce and cause injury to Ubervita's business, including the loss of sales, customers, and goodwill.

34. As a result of Defendants' unfair business practices, Ubervita has been damaged in an amount to be proven at trial, and will be irreparably harmed if such wrongful conduct is allowed to proceed.

35. Pursuant to RCW 19.86.090, Ubervita is entitled to its actual damages, an injunction restraining Defendants' unfair competition, its attorney's fees, and exemplary damages.

JURY DEMAND

36. Ubervita respectfully demands a trial by jury on all claims stated herein.

PRAYER FOR RELIEF

WHEREFORE, Ubervita respectfully requests judgment against Defendants, jointly and severally, as follows:

2. That the Court enter an Order awarding Ubervita its actual and exemplary damages against each of the Defendants, jointly and severally, in an amount to be determined at trial;

3. That the Court enter an Order awarding Ubervita its reasonable costs and attorney's fees; and

4. That the Court grant such additional relief as it deems just and appropriate.

DATED this 2nd day of July, 2014.

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